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# MEMORANDUM

## On the Administration of Justice in South Africa

### With Special Reference to the Native Population

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## I. JURIES.

The research which is presented here originated in the widespread feeling of disquiet aroused by the verdict and sentence of what is commonly known as the "Louis Trichardt case." Into the merits of that particular case it is not proposed to enter in this memorandum. It is but one of a number of cases of crimes of violence of white against black, where the discrepancy between the admitted facts on the one hand and the verdict and sentence on the other have aroused surprise and even indignation in the minds of many South Africans.

We should like to place on record, before going any further, our conviction that extreme and deliberate injustice in the type of case under discussion, although it may sometimes occur, is rare. Generally speaking, we have formed the impression that South African juries discharge their duties conscientiously, but upon the basis of certain unquestioned presuppositions not yet sufficiently analysed. Within the limits of these principles our juries, in spite of some rare gross miscarriages of justice, do generally show a realisation of the responsibilities of their task. It becomes all the more necessary to try, from our study of some hundreds of criminal records, to set down what we believe these unchallenged principles to be, and to demand that they be ruthlessly analysed by those concerned in any capacity in the administration of justice in South Africa. We have limited our research to crimes against the person and have not dealt with crimes against property, although much might be said in regard to sentences for stock theft.

We feel that the assumptions with which the average juryman faces his task can be reduced to six heads, and may be expressed as follows:—

(1) A white man will naturally use a considerable amount of force in dealing with a native with whom he has a difference. Should the native die thereafter, it may be presumed that he has not died as a direct result of the assault, unless there is irrefutable evidence to the contrary.

(2) No white man should ever be hanged because he has killed a native. Hence as hanging is the only possible sentence for murder, a jury ought not to find a white man guilty, if he is charged with the murder of a native.

(3) If the verdict is such that the white man in such a case is sentenced

to a short term of imprisonment, the jury has performed a laudable action, and one calculated to meet amply the ends of justice.

(4) Native evidence is frequently unreliable. Hence in the case of direct conflict between native evidence and European evidence, the latter should prevail.

(5) Natives do not regard rape as seriously as Europeans.

(6) This fact may be taken into consideration in mitigation where the complainant is a native girl but not otherwise.

It is not suggested that all these assumptions are necessarily erroneous. It is, however, claimed that many of them cannot face the test of an honest and unprejudiced analysis. Should this assertion be true, there is prima facie a good case for the suspension of the jury system, unless and until the average juryman shall have been educated to feel in his average moments what the better type of South African feels when he reflects seriously on the validity of these assumptions.

It may be interesting to devote a little attention to items (5) and (6) of the list of assumptions, dealing with the crime of rape. The feeling of the Courts on the subject is illustrated by the remark of one of our judges in imposing a sentence of imprisonment with hard labour for 18 months on a European found guilty of having raped a native girl aged 15. (Transvaal Criminal Record, No. 125 of 1926.) "We know generally," said the learned judge, "that natives do not consider rape as seriously as Europeans do." This sentence may be compared with that of seven years' imprisonment with hard labour and seven lashes on a native charged with assault with intent to commit rape on a European girl of 11. (Transvaal Criminal Record, No. 400 of 1925.) "Had you succeeded," said the judge, "I would certainly have sentenced you to death."

Two consecutive criminal records in the Transvaal cases for 1925 (Transvaal Criminal Record Nos. 167 and 168) are illuminating. A European found guilty on two counts of rape on a white girl of 11 was sentenced to nine years' imprisonment with hard labour. A native found guilty on two counts of rape on a native girl of 19 was sentenced to 12 months' imprisonment with hard labour. A European in the same year —we have chosen all our examples from

the same province and from the years 1925 and 1926, so as to avoid all possible unfairness in comparison — was charged with the offence of assault with intent to rape two native girls in a public street The jury found him guilty of indecent assault and the judge sentenced him to a month's imprisonment. (Transvaal Criminal Record, No. 114 of 1925.) It is interesting to compare this sentence with that of 12 months' imprisonment and five lashes imposed in the same year on a native for having had carnal connection with a European woman with her own consent (Transvaal Criminal Record No. 34 of 1925) or with that of three years' imprisonment and six lashes imposed on a native for entering the house of a European woman with intent to commit an offence. (Transvaal Criminal Record, No. 170 of 1925.)

It will be noticed that the only guiding principle which can explain these discrepancies in punishment is that of protecting the white woman in all cases more effectively than is thought necessary in the case of the native woman. It is not suggested that the white woman should be protected less than she is. It is, however, submitted that no adequate reason can be shown why the native woman should not be protected more than she is.

It will be noticed further that in the examples quoted, lashes are reserved specially for native criminals. In all the cases examined by us we discovered one only where a sentence of lashes was imposed on a white man. In the not inconsiderable number of cases where a native was found guilty of carnal connection with a white woman with the white woman's consent, lashes were imposed without exception. This latter type of crime cannot be described as in any way a crime of violence. Hence the usual rule that lashes are reserved for crimes of particular brutality has become in South Africa the rule that lashes are reserved for crimes committed by natives.

With regard to accusations of murder, culpable homicide and assault, the following cases selected from the same province and the same two years as before are not without interest.

A European, charged with culpable homicide against his native servant, admitted that he had hit the servant with a pickhandle and killed him. He was found not guilty by the jury and discharged. (Transvaal Criminal Record, No. 383 of 1925.)

Two native servants were charged with attempting to administer poison with intent to murder their European master. They pleaded not guilty, were found guilty, and were sentenced each to three and a half years' imprisonment. (Transvaal Criminal Record, No. 360 of 1925.)

In the following year a European was charged with culpable homicide on a native whom he had kicked in the back and who afterwards died. The medical evidence — not always the most satisfactory feature of such cases—showed that the native had been suffering from a tumour on the liver and that rupture of the tumour was the cause of death. The jury held that the evidence was insufficient to show that the rupture of the tumour was due to the blow given by the accused and found him guilty of common assault, with a recommendation to mercy. In passing sentence the judge said: "After you had time to cool down, you showed a want of consideration to the native, which, in my opinion, was cruel under the circumstances, and which I think I am quite entitled to take into account in passing sentence upon you." The sentence was one of two weeks' imprisonment without hard labour. (Transvaal Criminal Record, No. 124 of 1926.)

Four numbers away from this in the list of cases is the record of a native charged with the murder of his European master. The accused exercised his right to demand trial by a judge and two assessors, was found guilty, and sentenced to death. In his report on the case the judge said, inter alia: "I do not feel that the magistrate's finding that the condemned prisoner was not assaulted by any member of the police force at ..... is correct ..... I think that the question of carrying out the death sentence should be dealt with on the assumption that the accused was illegally thrashed by the police in order to induce him to return to the service of an employer whom for some reasons he greatly disliked, and that resentment at having been thus forced into the deceased's service and some feeling of desperation as to his prospects of ever getting away from deceased's service afforded the motive for the commission of this crime. I submit, therefore, that notwithstanding the gravity of the crime which he undoubtedly committed, there is good ground for commuting the death sentence, in view of

the youth and ignorance of the condemned man and the serious grievance which must have been rankling in his mind. Had I had before me at the trial all the information which is now available, I should have added to my verdict a recommendation to mercy." (Transvaal Criminal Records, No. 128 of 1926.)

The native was duly hanged.

Two cases which stand together in the records are as follows (Transvaal Criminal Records, No. 180 and 181 of 1926):—

A native was charged with assault with intent to do grievous bodily harm to a European woman. The woman was not actually hurt. Found guilty, the accused was sentenced to one year's imprisonment and eight lashes.

An illiterate European was charged with assault with intent to murder a native. He used a knife. The medical evidence was to the effect that at first the doctor thought that the native would die, so serious was his condition. The jury found him guilty of assault with intent to do grievous bodily harm. In passing sentence the judge said: "The jury have taken the most lenient view that it was open for them to take of your offence. You inflicted a very serious stab on this native boy, and you are very fortunate not to be standing here on a charge of murder." The sentence was six months' imprisonment, plus a fine of £25, or, in default of payment, another three months' imprisonment.

A study of these and similar cases has convinced us that, if substantial punishment is to be inflicted upon a white man accused of murder of a native, death must become the maximum instead of the sole penalty for murder. So long as the death sentence remains the sole penalty for murder, juries will refuse to convict white persons accused of murdering natives. From the idealistic standpoint of abstract justice this state of affairs may be deplorable. It has nevertheless to be reckoned with.

It may be argued that if the jury system be abolished there is no need to make this charge as regards the death penalty. We are, however, convinced that the judges without an exception would welcome a change which would relieve them from the awful responsibility of bringing in a verdict which can only mean the death sentence. At present, the question of what sentence is

ultimately to be imposed on a murderer is taken out of purely judicial hands and political advisers may in rare cases influence the final decision made. This remote possibility could be removed, and the sentence for murder like that for any other crime would be dealt with by the judiciary on judicial lines and in a purely judicial atmosphere, if the changes proposed were made.

It will be noticed here and later that although our investigation has been undertaken on the basis of the relation of colour distinctions to the administration of justice the main conclusions to which we have been led are general in character and are independent of the peculiar race and colour divisions of South Africa. We feel that this question of providing for an alternative penalty for murder is one of general importance and is an overdue reform in South Africa. Public opinion here is not yet convinced, as it has been in some countries, of the necessity for abolishing capital punishment; but would readily respond to any lead given it by the Government in the direction of authorising an alternative penalty.

The same remarks apply to the question of the continuance of the jury system. It is quite clear to us that the jury system, though not as black as some well-intentioned critics have painted it, has proved a failure in "mixed cases." The instances cited by us out of one province and one short period of two years are more than adequate proof of this fact. We feel, however, that our conclusions must rest on a far broader basis, and that one ought rather to raise the question whether the jury system as it operates to-day really serves any good purpose in South Africa. In our widely scattered country districts it means a very hard tax on the time of its members, especially of the farming community, who have to travel long distances often at very inconvenient times and for inadequate reimbursement, to fulfil the duties for which they are so freely criticised. We have had now for more than ten years an alternative system of trial by a judge and assessors, which has given general satisfaction. The whole country, white and black, has a great confidence in the judicial Bench and no section would feel that there would be a lessening of impartiality or an infringement of the liberty of the subject if the jury system were replaced in all cases by the alter-

native system of a judge and assessors or by three judge courts.

Much can be said for the simple solution of three judge courts. Although it might involve considerable additional expenditure, much would be saved on the present jury system, and the results would be the best obtainable. Failing this however the system of trial by a judge with two assessors would be a great improvement on the existing state of affairs. We feel that if this system were to be generally adopted it would be useful to have a special list of assessors—public servants or others—familiar with native laws and customs, whose services could be utilised in cases where their special knowledge would be of advantage.

We have spoken of the juries. It would not serve any useful purpose for us to speak of the judges. If ever there are cases where judges are open to criticism they are instances unavoidable by any merely mechanical changes; and in any case they do not detract from the general deep respect which the country has for its judicial Bench.

## II. POLICE AND INTERPRETERS.

There remains for our consideration the police. While much is being done in the way of better training of policemen, there still remain too many cases where the police handling of the accused leaves much to be desired. Perhaps the most severe criticism must fall on the Zulu policemen. It is certainly to be deplored that these men, often of no education and usually with little training, should be entrusted with the duty of policing tribes to whom they have an hereditary antipathy. In our opinion the native police at work in a given area, unless a thoroughly mixed force from the point of view of tribal composition, should be neither of the dominant tribe of that area, nor of a tribe which has a traditional antipathy to the dominant tribe of the area.

It is felt that there is much room for improvement in the nature of the training given to both native and European policemen in their training depots and afterwards. Though an amount of military organisation and control is essential, if overdone it tends to obscure the fact that their duties are pre-eminently civil and not military; with us the general tendency is in the direction of creating a haughty junkerdom lording it over the native population rather than a body

of trained men efficient only in the prevention of crime and the service of the public. This tendency is the more unfortunate since in any case the native placed in authority sometimes develops a haughty and overbearing manner very readily.

In the investigation of crime this attitude has very unfortunate results, as is always the case, when legitimate inquiry is tainted with unconcealed contempt. Investigational arrests are often resorted to on the flimsiest of pretexts, and the normal procedure in getting statements from native witnesses is a curious blend of coarse and threatening language. All these tendencies are undesirable and militate against the efficient performance by the police of their true function.

Many persons consider that the type of European taken into the police is the cause of trouble. This view is almost certainly incorrect. Though there are occasional unsuitable men in the force, as in every other body, the police on the whole can under no circumstances be regarded as bad material. It is considered that their predominantly military training is at fault; in such an atmosphere considerate conduct comes to be regarded as weakness and courtesy a waste of breath However decent the outlook of individual officers may be, conduct of a harsh and hasty type towards natives is so much the rule that they dare not deviate from it.

That this should be the tradition with the white members of the force is regrettable, not only in itself but also in its effect upon the native police whose naturally overbearing tendencies can only be countered by a strong example of the opposite from their European superiors. It would be very desirable then if European policemen were to take the utmost pains to give a specially good example to native policemen in this regard, and were also in the habit of exercising more control and restraint upon overbearing native constables The development of the habits of courtesy, patience and considerateness should be one of the principal features of police training for both white and black.

There are various unsatisfactory features with regard to interpretation in native cases, some of which tend to lead to greater or smaller miscarriages of justice resultant upon greater or smaller defects in the interpretation of the procedure and evidence in such cases. While vitally

erroneous interpretation is happily rare, the number of cases of inaccurate interpretation in apparently slight, but ultimately important detail is not inconsiderable. Accurate interpretation is a combination of science and art, and the really first-class interpreter is rare. Nevertheless if the ends of justice are to be served it is of the utmost importance that the level of interpretation, depending on the intellectual and moral level of interpreters, should be as high as possible. In order to ensure this it is necessary that the interpreter should have, in as high a degree as possible the following qualifications: (a) A high standard of general intelligence, (b) A high moral character. (c) A very thorough knowledge of both the native and European language which he is required to interpret. (d) Some specialised training in interpretation, and in his allied duties, under actual working conditions, but under strict supervision and control. (e) A properly assigned and adequate status.

The general level of interpreters, European and native, does not at present appear to have all these qualifications in a satisfactory degree, though it must be said that, speaking generally, and bearing all exceptions in mind, European interpreters are usually better equipped for their work than native interpreters

We may now consider seriatim the qualifications cited above with a view to discovering why they are not more generally found, and to suggesting ways and means as to how they may be more universally ensured.

(a) General Intelligence.—There would appear to be no necessary preliminary qualification of a general educational nature for aspirant interpreters. This is no doubt due to the difficulty of finding people with the requisite linguistic knowledge, who, at the same time, possess some prescribed standard of general education. This difficulty is not so apparent in the case of European interpreters, who generally are on a sufficient, if not always on a commendable level of general education; but in the case of native interpreters the standard of general education is poor; one refers here to the ordinary clerk-interpreter in the native commissioners' courts, the native constable in the smaller establishments, and the casual native who has often to be utilised for the purpose. One does not wish here to be unjust to the large number of fairly well-educated men,

European and native, who do their duty to the best of their general ability, but the lack of a system of rigorous selection by a preliminary educational test brings down the general level.

(b) Moral Character.—This is a point on which it is difficult to generalise and easy to be unjust. On the whole, the moral standard of interpreters appears to be sound; but there are exceptions, perhaps more especially in the case of native interpreters, of men who do not take the serious and high view of their duties which the very responsible nature of these duties makes imperative. Some native interpreters more especially are too much imbued with the sense of their own importance in the eyes of their fellow natives in court, are hasty and truculent to litigants and witnesses, partly from a desire to impress these with a show of authority, and partly in their eagerness to show off their power of interpretation by being quick and glib. One has no reason to believe that they deliberately thwart the ends of justice by any such means; but their lack of appreciation of the seriousness of their work, their self-esteem and their lack of proper intellectual balance must have undesirable effects on all concerned. One is convinced that much of this is avoidable by a rigorous selection of aspirants to interpreterships on the basis of character, and ascertained by competent and reliable judges of native psychology and character. At present this side, though it is not neglected, is treated a little more haphazardly than is safe. And it must be admitted that some administrators and others who have to make use of interpreters in dealing with natives allow such interpreters more freedom in their attitude towards such natives than they would allow a European interpreter in his attitude towards Europeans. To this the Transkei, in particular, forms a brilliant exception, with the rest of the Cape a fair second. Reverting to the general point at issue, however, we may say that, while, on the whole, the moral standard of interpreters is a good one, the exceptions, which the present slightly haphazard system of selection unfortunately does not prevent, bring home to us the realisation that the moral level of these men cannot be too high.

(c) Linguistic Knowledge.—This is in a sense the central point of the whole problem. Too much emphasis cannot be laid on the statement made above, that accurate interpretation is a science as

well as an art, and too much cannot be done to see that interpreters possess the science and can exercise the art. Not only is a fluent, accurate and idiomatic knowledge of both European and native languages essential, but there must be added the proved ability to interpret from the one to the other with accuracy and understanding, and scrupulous attention to the finest details of the idiom. It must be remembered that the lexicology, the morphology and the idiom of the native languages are very radically different from those of the European languages, and that the work of rendering the one into the other requires linguistic gifts of an uncommon order. Here again the heaviest weight of our criticism is against the native interpreter. The European interpreter has, as a rule, a good knowledge of his European mother tongue, and a fluent if less thorough knowledge of the native language, since he has in most cases acquired the latter direct from natives, most probably in the linguistically receptive years of childhood. His translation from the European into the native language tends to be less accurate than his translation of the native language into the European, but, on the whole, his knowledge of both is usually greater than that of the average native interpreter. The latter knows his mother tongue well enough, any other native language less well (a point which is often forgotten), and has not, except in individual cases, a really good knowledge of the European language. Indeed, it is often surprising how little, or what is worse, how inaccurately, he knows the European language. The fact that his interpretation is crammed full of high-sounding words and technical phrases is no guarantee that he has grasped the significance of his glib vocabulary. This lack of knowledge of the European language leads to two defects; the first, that he often interprets from the native language in the wrong manner, to the wrong colouring of the statement made; the second, that he often really does not himself understand what it is that he has to interpret from the European into the native language. It may be imagined to what confusion this kind of thing leads. A very few examples may be cited at random:—

"English: *Must* the chief call his people?

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| SeSotho : | A kgoshi e soanetse go bitsa batho ba gagwe? (i.e. *should* he?) In this case the evidence elicited was to ascertain whether the chief had or had not the *legal* obligation to call his people to help him decide a certain matter. The whole case turned upon this point. |
| English : | I am here to serve the ends of justice. |
| Tshi Venda : | Ndi dzula fhano ndi kho shumela mafhungo a khoroni. (i.e., I am sitting here working at the affairs of the court.) |
| SeSotho : | Letsema. (a beer drink in the fields after the completion of communal work.) |
| English : | Garden party. |
| Isi Xosa : | A ndi vumi nalo. (i.e., I don't want to tell.) |
| English : | I refuse with it (the literal translation). |

Much of this lack of knowledge among interpreters as they are is undoubtedly due to the fact that they are not subjected to a sufficiently searching examination as to their linguistic attainments, and that the process of selection is not rigorous enough. The practice appears to be that aspirant interpreters are submitted to some sort of test, the nature of which is not prescribed, at the discretion of the local administrative officer. This officer, if he considers himself incapable of conducting such a test, asks someone whom he judges capable to report on the candidate. No qualifications are prescribed for such an examination, nor, it may be repeated, is any test prescribed as to nature or standard of proficiency. Examinations were formerly held, as, e.g., under the Natal Government, which had a regular examining board for Zulu; and some years ago the Public Service Commission instituted examinations for interpretation; but these have now been abandoned. This haphazard method now in vogue of choosing candidates for interpreterships must have the most serious results on the efficiency of the personnel of this body.

(d) Specialised Training.—The work of the court interpreters is, in many senses, highly technical. Not only are there

many technical terms to be mastered and used in the one language and the other, but the work of interpreters usually also includes the taking of depositions and similar responsible single-handed duties. No one can be expected to show familiarity with such things as a preliminary requisite, but it may fairly be demanded as an essential condition of confirmation in an appointment after a period of probation. Such a system is more or less in vogue at present, where interpreters are appointed on a year's probation, and are watched fairly narrowly during that year. A difficulty in doing this properly arises, however, when there is not in the person of his immediate head or someone else in daily contact with him someone who has himself the requisite linguistic knowledge to check the interpreter's translations. It is essential that any probationary period should be undergone under conditions of strict supervision. Also, until the aspirant interpreter has already shown considerable fitness for the post he is to occupy it is hardly fair to charge him with work of a highly responsible nature, as has often to be done. Here again the Transkei, and in a lesser degree Natal, are exceptions, since there a knowledge of Xosa or Zulu, as the case may be, is common among magistrates and their staffs, and the work of supervising the interpreter is a simple matter.

(e) Status.—The present status and hand in hand therewith, the present emoluments of interpreters, European and native, are not as high as the skilled and responsible nature of the work, in its highest interpretation, merits; so, for instance, third grade European clerk-interpreters in the Native Affairs Department can attain a maximum of only £240 per annum, while the scale for native clerk-interpreters is even more modest. While in no way wishing to exaggerate the self-esteem of the wrong kind of native interpreter, one feels that some real dignity should be given to the best class of interpreter, white or black. It would only raise the efficiency and the moral level of these men if they could look forward to attaining salaries commensurate with the value of the highest class of work that they can be entrusted with. At present interpreters feel they are not recognised as they should be, and their moral stamina and intellectual level suffer accordingly.

Some of the possible remedies for the unsatisfactory features enumerated above

will already have been obvious from the nature of the flaws themselves. It may be well here to sum up, by way of recapitulation, the measures which it would be wise to take in order to raise the quality of the interpreters and their work.

There should be a series of strict preliminary tests for aspirant interpreters to ascertain their general educational qualifications, their moral character, and their linguistic ability, and in favour of this the present more or less haphazard system should be abolished. Such men, European or native, should be referred in the first instance to a body capable of testing their general educational qualifications. It is not suggested that the possession of any particular scholastic or even academic qualification should be made a prerequisite; but some test, of the standard though not necessarily of the nature of the matriculation examination, should be insisted upon, to be designated, perhaps, the Interpreters' Entrance Examination, for which all aspirants might sit whatever their previous qualifications.

The explanation of many of the criticisms levelled at the native interpreter is to be sought in the lack of facilities for general higher education and especially advanced linguistic training for natives. One of the more obvious remedies for the present state of affairs would be the endowment of a native interpreters' training course at some suitable institution, such as the South African Native College at Fort Hare. Some estimate of the candidates' moral character should be made by a competent body, consisting of men who have a good knowledge of native psychology and character. At least three persons should sit on such body, not more than one of whom should be a minister of religion. When this preliminary educational test has been passed, and the moral character of the candidate duly investigated, a linguistic test should be applied. This latter should be prescribed as to its nature, and a certain standard of proficiency in it should be required. It should consist of translation, written and oral, from and into the native and European language respectively and one part of it should be interpretation such as the candidate is likely to have to do in the course of his work. It should be applied by a competent body of men chosen after due examination of their qualifications, which should, above all things, be practical.

When the candidate has passed such test he is ready to assume probationary duty, and during this period he should be carefully watched, as well as receive instruction, in his allied duties. No candidate should be assigned to a station during this period unless there are senior officers at that station with the requisite linguistic knowledge to supervise his work Throughout he should be impressed with the serious nature of his duties, and the responsibility of his post, and in particular his demeanour towards natives should be watched In this connection it may be as well to indicate the general advisability of appointing as interpreters in a given language men who speak that language as their mother tongue, e.g., the appointment of BaSotho, with a knowledge of Xosa, to interpret in Xosa-speaking districts should in general be avoided. It is not necessary to appoint a man from the district concerned, though it may sometimes be advisable where the local idiom is peculiar. It would generally be satisfactory to appoint, say, to the district of Ngamakwe a man hailing from, say, Peddie But it would be unwise in most cases to appoint a man hailing from, say, Pondoland, to a Fingo-speaking district

The interpreter once appointed, he must be clothed with the true dignity pertaining to the highest conception of his profession. To this end, adequate remuneration and the provision of a satisfactory scale of increments leading to the attainment of a reasonable maximum must be provided If remuneration is kept at its present low level, the class and quality of man attracted to the profession will necessarily remain lower than it should be, and the quality of interpretation would remain, as it is, on a lower level than is commensurate with the interests of justice.

## III. MAGISTRATES' COURTS.

A list of the differences made in the treatment of natives and Europeans in the magistrate's court is not inconsiderable, but fortunately many points are unimportant. It does not matter that native accused are located inside the dock, while Europeans stand in front of it, although it is noteworthy that this distinction is not made in the Supreme Court. Nor does it matter that natives are treated with pointed rudeness and

ready sarcasm, while there is a show of courtesy to Europeans, for it is good to know the tendency of the Court and politeness can only obscure it. White women, for instance, are sometimes treated with a deceptive civility by chivalrous magistrates which other persons are spared. Nor does it matter that natives enter and leave by different doors and are shut up in less commodious cells awaiting trial than white men, although the natives constitute the vast majority of accused persons. As will appear later, it would not matter much that they are huddlled collectively, if only they were not hustled individually.

A difference of some importance is made after judgment has been given. A white man declared not guilty immediately walks out a free man. If he is fined he pays the clerk of the court then and there and the result is the same. If he has awaited trial in the cells his pocket book and cash may be with the property sergeant. He is at once free to get them. He need not do so if he does not wish it. If there is nothing in his property list the matter ends with his acquittal.

With the native it is different. Innocent or guilty, with or without the option of a fine, he goes back into the "stokkies," where a native constable guards him. There he remains till lunch time or the afternoon adjournment, or possibly until enough of his fellows gather there collectively to merit attention. Only then is the judgment put into effect. If an attorney insists on his client's immediate release this can only be done by getting the clerk of the court to initial and mark his property list "discharged," after which he is marched willy-nilly to the cell sergeant and forced to take his effects, if any, or to exhibit his nil property list, if none.

Detention after discharge is, however, of less importance than other matters which casual observers would consider trifling for, though irksome, it does not alter the kind of justice meted out. The worst feature of our magistrates' courts is certainly the "hustling" of native accused. It is not easy to describe this process. It consists of a mass of detail. A native under arrest does not walk from one place to another; he is pushed. He is not told to halt; he is grabbed and held. The native police constantly pluck and pull at the accused, make him stand in particular spots in particular

manners. Prima facie they are merely helping him or showing him what to do, but on close observation it will be seen that even natives exhibiting the utmost alacrity and obedience cannot escape from this odious form of attention.

This attention is lavished upon the accused in open court when he stands up to answer the charge, and it is extremely disconcerting to him, as indeed it would be to persons with a far clearer grasp of the situation than the average native. It is the usual procedure in our courts. The native cannot voice an intelligent protest at such treatment, for he may already be too embarrassed by his stupidity and the difficulty of conducting his case. Because he may look stupid it is thought that he doesn't mind the treatment and that it is therefore all right; in point of fact it interferes with what is too often the already clumsy working of his mind, and people tend to overlook the fact that that is an element of the utmost importance in the procedure.

Natives cannot usually epitomise a contention or present it clearly. Whatever they advance is shrouded in irrelevant narration and the legitimate anxiety of the officers to eliminate such matter in saving time and speeding up the procedure often results in the elimination holus-bolus of a good defence as well. "What has that got to do with it?" raps out the Magistrate crossly. The native does not know whether the Court realises what he is going to say or not, he may be increasing his sentence by going on; anyway his opening seems to be unwelcome and he abandons the point.

The same thing happens when the accused speaks out of his turn; he is half way through a sentence when an orderly moves upon him and shouts "Tula." He is left to infer that his contribution to the proceedings is unwelcome. It is often possible to catch in these half-completed efforts the germ of a good point which, once silenced in this manner, is never again brought up in the course of the trial. Similarly when he is asked to cross-examine a witness, the native labours in the forming of questions. He wishes to put a position to the witness and his only way is to describe the whole position replete with detail, intending finally to say, "Isn't that so?" He is stopped at once. "You can't stand here and tell a long story.

You must ask questions," says the magistrate, and this information in the mouth of the interpreter turns into a strident command to "Ask! Ask!" Even practitioners are not thus forced into the difficult process of direct interrogation and the cross-examination by a native is rendered farcical by it

Needless to say, this mental and physical hustling does not take place in the case of European accused and in native cases lends an unhappy colour to the administration of justice.

Although it is the reverse of good sense and reason, cases in which white men plead not guilty are regarded as the only ones which legitimately take time or cause delay. The Crown's case is usually simple, a matter of daily routine. If there is any novelty it generally lies in the defence. On any proper view it should take more time to get at, consider and decide on the true nature of a defence raised by an illiterate native than to grasp and deal with the contentions advanced by a European accused. As things are it is the former that gets "polished off," and the latter that gets "heard."

From the foregoing it would appear that many of the difficulties indicated above spring from a lack of knowledge on the part of the native of the procedure in European Courts, and perhaps also on the part of the magistrates of customary native legal procedure. Since it is impossible to see that every native understands the procedure to which he is subjected it would help matters considerably if it could be ensured that all magistrates had as adequate a knowledge as possible of the procedure of tribal native courts.